

Message Text

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C O N F I D E N T I A L MANILA 1422

E.O. 11652: GDS

TAGS: PINT, RP

SUBJECT: SUPREME COURT DECISION ON REFERENDUM'S CONSTITUTION-
ALITY EXPECTED THIS WEEKEND

REF: MANILA 1284

1. BEGIN SUMMARY: ON JANUARY 31ST SUPREME COURT HEARD ARGU-
MENTS ON PETITION TO CANCEL REFERENDUM. HEARING LASTED AL-
MOST 9 HOURS AND PLAYED TO SRO AUDIENCE. SOLICITOR GENERAL
TOLD EMBASSY DECISION WOULD PROBABLY BE ANNOUNCED BY SATURDAY
(FEBRUARY 1). PRESS GAVE HEARING EXTENSIVE COVERAGE WITH
EDITORIALISTS SUGGESTING THIS WAS "DEMOCRACY AT WORK". WE
CONTINUE TO EXPECT SC WILL AFFIRM CONSTITUTIONALITY OF
REFERENDUM. END SUMMARY

2. SC HEARD ARGUMENTS ON PETITION TO CANCEL REFERENDUM FOR
ALMOST NINE HOURS YESTERDAY (JAN 30). COURTROOM WAS PACKED TWO
HOURS BEFORE HEARING BEGAN AND LOUDSPEAKERS RELAYED PLEADING
TO AUDIENCE OUTSIDE. COURT DEBATE DESCRIBED AS HEATED
WITH SENATOR TANADA CLASHING FREQUENTLY WITH VARIOUS JUS-
TICES. TANADA ARGUED ALONG LINES INDICATED REFTEL. HE
BEGAN, HOWEVER, BY STATING IN REPLY TO CHIEF JUSTICE'S
QUESTION THAT HE ACCEPTED 1973 CONSTITUTION. CHIEF JUS-
TICE INDICATED TO AMBASSADOR AT DINNER SAME EVENING TANADA
HAD "GIVEN HIS CASE AWAY" WITH THIS STATEMENT.

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3. SOLICITOR GENERAL MENDOZA ARGUED THAT TRANSITORY PROVISIONS OF NEW CONSTITUTION EXPLICITLY AUTHORIZE MARCOS TO EXERCISE LEGISLATIVE POWERS AND ISSUE PROCLAMATION, DECREES AND ORDERS UNTIL NATIONAL ASSEMBLY CONVENED. SAME POWERS GIVEN PRESIDENT DISCRETION AS TO WHEN TO SUMMON NATIONAL ASSEMBLY. BY VIRTUE OF SAME POWERS PRESIDENT HAS CONSULTED PERIODICALLY WITH PEOPLE TO ASCERTAIN THEIR WISHES ON WHETHER HE SHOULD CONTINUE EXERCISING MARTIAL LAW POWERS AND WHETHER TO CONVENE NATIONAL ASSEMBLY. MENDOZA ASKED COURT TO RE-AFFIRM EARLIER DECISIONS ON CONSTITUTIONALITY OF THESE POWERS AND MARTIAL LAW.

4. PRESS PROVIDED UNUSUALLY DETAILED ACCOUNT OF TECHNICAL LEGAL ARGUMENTS ADVANCED BY BOTH SIDES. EDITORIALIST FOR JAN 31 BULLETIN WROTE "THE SOLICITOR GENERAL PLEADED AS AN ORDINARY LITIGANT IN COURT WHILE THE PRESIDENT CAMPAIGNS LIKE A CANDIDATE IN THE HUSTINGS. DEMOCRACY IS AT WORK". ALLUDING TO UPCOMING REFERENDUM (WHICH HE AUTOMATICALLY ASSUMED WOULD BE HELD) THE EDITORIALIST ADDS "THE PROCESS IS DEMOCRATIC IN NAME AND IN REALITY. IT VINDICATES THE LOOSE OBSERVATIONS THAT THE PHILIPPINE GOVERNMENT IS A DICTATORSHIP."

5. COMMENT: IT IS INTERESTING GOVERNMENT FELT CONSTRAINED TO GO THROUGH WITH HEARING AND ALLOW SUCH COMPREHENSIVE MEDIA TREATMENT. OBVIOUSLY AS THE BULLETIN EDITORIALIST POINTS OUT, MARCOS HOPES IT WILL SUGGEST DEMOCRACY IN ACTION. SOLICITOR GENERAL TOLD EMBASSY LATE TODAY (JAN 31) HE EXPECTS SC DECISION BY TOMORROW (FEBRUARY 1). WE DO NOT BELIEVE GOVERNMENT IS IN FOR ANY SURPRISES, I.E., SC WILL AFFIRM REFERENDUM'S CONSTITUTIONALITY.
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